

HOUSE BILL REPORT

HB 2722

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to price gouging during significant disruption, emergency, or disaster.

Brief Description: Prohibiting price gouging during significant disruption, emergency, or disaster.

Sponsors: Representatives Ericks, Haler, Hudgins, Conway, B. Sullivan, Simpson, Hasegawa, Roberts, Moeller, Appleton, Green, Sells, Kenney, Clibborn, Ormsby, Morrell, Lantz, Upthegrove and P. Sullivan.

Brief History:

Committee Activity:

Commerce & Labor: 1/25/06, 2/1/06 [DP].

Brief Summary of Bill

- Grants the Governor the right to make and rescind a proclamation of an abnormal market condition.
- Prohibits the sale of essential consumer goods or services for cleanup, repair, or reconstruction services at clearly excessive prices during a period proclaimed by the Governor as an abnormal market condition, emergency, or disaster.
- Establishes remedies under the Consumer Protection Act.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member and Holmquist.

Staff: Sarah Dylag (786-7109).

Background:

Governor's Emergency Proclamation Power

The Governor may, after finding that a public disorder, disaster, energy emergency, or riot exists within the state that affects life, health, property, or the public peace, proclaim a state of emergency in the area affected.

Washington Emergency Management Act

The Washington Emergency Management Act (Act) was enacted in 1951, to ensure the adequacy of state disaster preparations, provide for administration of disaster relief programs, ensure adequate support for search and rescue operations, and preserve lives and property of the people of the state. The Act includes provisions for a state comprehensive emergency management plan, local emergency management planning, emergency preparedness education and training, cooperation among governmental units within the state and with other state governments, and emergency powers. The Act applies during a proclamation of emergency by the Governor.

Consumer Protection Act

The state's Consumer Protection Act (CPA) was enacted in 1961, to provide civil remedies for damages related to unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade and commerce. The CPA allows an injured party to file a civil claim to prevent further violations and to recover actual damages, costs, and attorney fees. The court has discretion to increase an award of damages up to an amount three times the actual damages sustained. The Attorney General also may bring an action to enjoin an activity prohibited under the CPA.

Price Gouging

Washington does not have a state law prohibiting price gouging.

Summary of Bill:

The Preventing Price Gouging During Emergencies and Disasters Act is enacted. Certain price increases during periods proclaimed by the Governor to be an abnormal market condition are a violation of the state's CPA.

Abnormal Market Condition

In addition to existing emergency proclamation powers, the Governor is authorized to make and to rescind a proclamation of an abnormal market condition. "Abnormal market conditions" are instances of significant disruption to the marketplace caused by terrorist acts, civil disorder, war, military action, or natural disaster.

Unlawful Activity During Abnormal Market Condition

For 30 days after the Governor's proclamation of an abnormal market condition, it is unlawful for any person to sell or offer to sell at retail any essential consumer good or service within the

area designated in the proclamation at a clearly excessive increase in price above the price charged by that person immediately prior to the proclamation.

For 90 days following the Governor's proclamation, it is unlawful for any person to sell or offer to sell at retail any emergency cleanup, repair, or reconstruction service within the area designated in the proclamation at a clearly excessive increase in price above the price charged by that person for such goods or services immediately prior to the proclamation.

A "person" is defined for purposes of these provisions in the same manner as in the CPA to include natural persons, trusts, unincorporated associations, and partnerships. An "essential consumer good or service" is defined as a retail good or service used, bought, or rendered primarily for personal, family, or household purposes, and is necessary for consumption or use during a period of abnormal market condition. Included within this term are food items, emergency supplies, medical supplies, building materials, fuel, transportation services, storage services, and temporary housing.

Extension of Abnormal Market Condition

The Governor may extend the proclamation period for additional 30-day periods by issuing a renewed proclamation. Renewed proclamations must be based upon a finding the abnormal market condition continues and any such extension is deemed necessary to protect citizens' health, safety, or welfare. The Governor may rescind an emergency proclamation upon a finding that no abnormal market conditions exist.

Price Provisions During an Abnormal Market Condition

Provisions are included to specify how price increases are treated during an abnormal market condition:

Clearly Excessive Price: A price increase in excess of 15 percent not tied to reasonable expenses necessarily incurred in procuring or delivering an essential consumer good or service during the abnormal market condition is prima facie evidence of a clearly excessive price increase.

Reasonable Expenses Exception: A price increase is not unlawful if the higher price charged reflected reasonable expenses in addition to the prior price of the goods or services. Reasonable expenses are limited to those necessarily incurred in procuring or delivering such goods and services during the abnormal market condition.

Temporary Discounts: If the price of any essential consumer good or service, or emergency cleanup, repair, or reconstruction service was temporarily discounted or reduced immediately prior to the abnormal market condition, the price at which the person normally or usually sold the good or service is the price for purposes of determining whether a price increase is prohibited.

Regulated Entities: Persons whose activities or transactions as to prices for goods or services are subject to regulation by the Washington Utilities and Transportation Commission or the Federal Energy Regulatory Commission are exempt from the price increase provisions.

Persons who Provide Advertising: Persons who provide advertising and related services for persons engaged in making offers to sell goods or perform services are not deemed to be making any offer to sell any goods or perform any services for purposes of the price increase provisions.

Defenses

A person will be deemed not to have violated the price increase provisions if the person proves:

- violation of the price limitation was unintentional;
- the person voluntarily rolled back prices to a level permitted upon discovering that the provisions were or may have been violated; and
- the person has instituted a restitution program for all consumers who may have paid excessive prices.

Subsequent remedial measures are not admissible as evidence of a violation.

Legislative Findings

Legislative findings specify that consumers are vulnerable to price gouging or clearly excessive pricing during times of abnormal market conditions caused by significant disruptions, emergencies, or disasters. Legislative intent is included to state excessive and unjustified increases in retail prices during abnormal market conditions should be prohibited and made subject to civil remedies.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) We have recently seen examples of problems that arise during emergencies. During the hurricanes, we saw prices increase. The point of this bill is to create a tool, especially for local government, to intervene during natural disasters. The point is not to penalize a free marketplace. This is to put another tool in local government's toolbox when they are dealing with emergencies.

(Neutral) Twenty-eight states have similar legislation with four common elements. The four elements are: (1) the legislation applies to all commodities; (2) the prohibitions apply during a declared emergency; (3) an excessive price is prohibited; and (4) there are opportunities for self remedies. The bill is similar to other state models and to a bill from several years ago. It is the role of the Legislature if it wants to deal with this issue, but any legislation must include all commodities.

Note, however, that in the Joint Meetings of Committees of the Legislature this past interim, the Attorney General's Office noted that there were only eight claims of price gouging after Hurricane Katrina.

Testimony Against: This bill includes fuel, even though the gasoline industry is different than the other commodities addressed in the bill. In the gasoline industry, retailers must raise prices when the wholesale price rises. This bill does not recognize that oil companies ration gasoline during times of crisis, which causes prices to rise. Wholesalers should be added into this bill. Retailers have to pass the price increases at the wholesale level along. Legislation like this does not focus on where the price increases actually come from.

The bill lacks protection for small contractors. The definitions are too loose, including the definition of "abnormal market condition" and "excessive price increase." The bill could result in harm to small business. Price escalations within industries have occurred in recent years, including price increases of as much as 400 percent. The cost of labor is also increasing. The increases are not because of price gouging, but because of increased demand. Large businesses can absorb these price increases, but small businesses cannot. This legislation will increase the difference between large businesses and small businesses. If a sudden increase in demand occurs, small businesses will be at a greater disadvantage.

Government imposed artificial price controls do not work. Capped prices during high demand result in shortages.

Persons Testifying: (In support) Representative Ericks, prime sponsor.

(Neutral) Greg Hanon, Western State Petroleum Association.

(Opposed) Amy Brackenbury, Building Industry Association of Washington; Daimon Doyle, Doyle Custom Homes; Tim Hamilton, Automotive United; and Charlie Brown, Washington Oil Marketers Association.

Persons Signed In To Testify But Not Testifying: None.